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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

FEB 13 2003

In the Matter of

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations
(Nantucket, South Chatham and
East Harwich, Massachusetts)

MM Docket No. 02-72
RM-10399

To: Chief, Allocations Branch

**JOINT REPLY COMMENTS OF BREWSTER BROADCASTING
COMPANY AND MONOMOY MEDIA**

Monomoy Media ("Monomoy") and Brewster Broadcasting Company ("BBC"), pursuant to Section 1.420 of the Commission's Rules and by their respective counsel, hereby file their Reply Comments in this rulemaking proceeding.² The Commission should grant either Monomoy's or BBC's counterproposal to allocate Channel 254A to South Chatham, Massachusetts or East Harwich, Massachusetts. Either counterproposal better serves the public interest by providing a first local service to a new community than John Garabedian's proposal to allocate a fourth local service to Nantucket, Massachusetts. In support thereof, the following is hereby submitted.

On February 25, 2002, John Garabedian ("Garabedian") filed a petition for rulemaking to amend Section 73.202(b) of the Commission's Rules, proposing to allocate Channel 254B1 to Nantucket as that community's fourth local service (the "Garabedian Petition"). On March 29, 2002, the Commission issued a *Notice of Proposed RuleMaking* and invited comments from the public. On May 20, 2002, Monomoy and BBC filed counterproposals proposing the allocation of

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List A B C D E

¹ The communities of South Chatham and East Harwich have been added to the caption.

² On January 20, 2003, the Commission released a Public Notice (Report No. 2591) authorizing the filing of Reply Comments in response to counterproposals filed by Monomoy and BBC in this proceeding by February 13, 2003. Thus, these Reply Comments are timely filed.

Channel 254A either to South Chatham or East Harwich, Massachusetts, respectively. Both counterproposals are mutually exclusive with the Garabedian Petition.³ Because each counterproposal proposes a first local service to a new community, either counterproposal is superior to Garabedian's petition for a fourth local service for Nantucket.⁴

Recognizing his precarious position, Garabedian filed Reply Comments on June 4, 2002 seeking dismissal of Monomoy's and BBC's counterproposals. Garabedian did not challenge the bona fides of the showings contained in the counterproposals that South Chatham and East Harwich qualified as communities for allotment purposes. Instead, Garabedian seeks to discredit South Chatham and East Harwich as separate communities, arguing that the communities are part of Chatham and Harwich, respectively, and that Chatham and Harwich are part of the Bamstable-Yarmouth Metropolitan Area and the Cape Cod radio market. Garabedian relies upon *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*") to support his claim.

Nothing in Garabedian's Reply Comments contradicts the showings presented in Monomoy's and BBC's respective counterproposals that South Chatham and East Harwich are separate communities for allotment purposes. South Chatham has its own post office and zip code and is listed in the U.S. Census, while East Harwich is a census-designated place. These indicia alone are sufficient to confer community status upon South Chatham and East Harwich.⁵ Moreover, the counterproposals included additional information qualifying South Chatham and East Harwich as separate communities, including the existence of local businesses, churches, civic organizations and local government in each community.⁶

³ On May 20, 2002, East Wind Communications filed comments expressing its interest in the proposed allocation for Nantucket and stating its intent to file an application for construction permit for Nantucket.

⁴ The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) other public interest matters. Co-equal weight is given to Priorities (2) and (3). See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 91 (1982).

⁵ See *Cleveland and Ebenezer, Mississippi*, 10 FCC Rcd 8807 (Alloc. Br. 1995).

⁶ See, e.g., *Sun Isidro, Texas*, 2002 FCC Lexis 6503 (Alloc. Br. 2002) (determining that San Isidro, a census designated place with population of 208, its own post office, fire department, city commissioner and local

Garabedian's claim that South Chatham and East Harwich are not separate communities but part of an urbanized area is due to an incorrect interpretation of the applicability of *Tuck* to rulemaking proceedings. The purpose of a *Tuck* analysis is to ensure that any relocation of a radio station from a rural area to or near an urbanized area will be to a bona fide community, and not a community that is interdependent with the urbanized area. As a threshold matter, the Commission conducts a *Tuck* analysis only when the proposed allotment is located within an urbanized area or would place a city grade signal over 50% of any urbanized area.' Garabedian provides no evidence that a *Tuck* analysis is required with respect to either counterproposal. This is not surprising, since neither South Chatham nor East Harwich are located within an urbanized area or places a city grade signal over 50% of any urbanized area. Consequently, no *Tuck* analysis is required in this proceeding.⁸

Assuming, *arguendo*, that Garabedian is correct and South Chatham and East Harwich are not separate communities but actually are part of Chatham and Harwich, respectively, the Monomoy and BBC counterproposals are still superior to the Garabedian Petition.' Garabedian proposes a fourth aural service to Nantucket. Monomoy proposes a second aural service to Chatham'' while BBC proposes a second aural service to Harwich.'' The allocation of a second aural service to either community is superior to a proposed fourth aural service to Nantucket.

churches qualifies as community for FM allotment purposes); *Fort Bridger, Wyoming and Woodruff, Utah*, 16FCC Rcd 606 (Alloc Br. 2002) (determining that Woodruff, a census designated place of 135 persons, a local government, post office, zip code, local businesses and churches constituted a community for FM allotment purposes).

See Harrodsburg and Keene, Kentucky, 17 FCC Rcd 13506 (Aud. Div. 2002); *Kankakee and Park Forest, Illinois*, 16FCC Rcd. 6768 (Alloc. Br. 2001).

⁸ *See, e.g.*, the Technical Statement attached to BBC Counterproposal. The absence of an urbanized area is further buttressed by the fact that the Commission recently allotted an FM channel to a new community within the Bamstable-Yarmouth area without requiring a *Tuck* showing. *See, e.g., Brewster, Massachusetts*, 14FCC Rcd 2118 (Alloc. Br. 1999).

⁹ If South Chatham and East Harwich are not separate communities, the appropriate Commission action is not to dismiss the Monomoy and BBC counterproposal, but to conduct a comparison of the communities of Chatham, Harwich and Nantucket for allotment purposes.

¹⁰ WFFC-FM is licensed to Chatham.

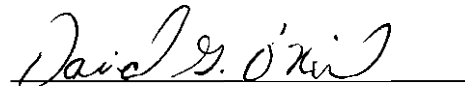
¹¹ WCCT-FM is licensed to Harwich.

A standard comparison of the communities of South Chatham and East Harwich indicates that East Harwich as the larger community is more deserving of a first local service than South Chatham. In order to conserve the Commission's resources and avoid a lengthy proceeding, Monomoy and BBC have no objection to the Commission granting either counterproposal and hereby state their intention to file an application for construction permit for either community.

WHEREFORE, for the foregoing reasons, Monomoy Media and Brewster Broadcasting Company hereby request that the Commission deny Garabedian's petition and grant either the Monomoy Media or Brewster Broadcasting Company Counterproposal.

Respectfully submitted,

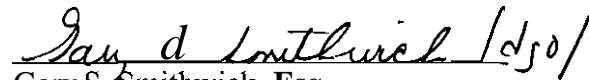
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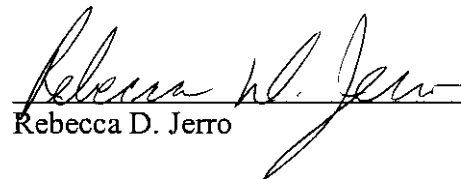
I, Rebecca D. Jerro, a secretary in the law office of Manatt, Phelps & Phillips, LLP, do hereby certify that on this 13th day of May, 2002, I caused copies of the foregoing "Joint Reply Comments of Brewster Broadcasting Company and Monomoy Media" to be delivered by first-class mail, unless otherwise specified, to the following persons:

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